FILE COPY

Office - Supreme Court, U.S.
FILED
APR 1? 19??
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 857

JOHN L. LEWIS, HENRY G. SCHMIDT AND JOSEPHINE ROCHE, AS TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, *Petitioners*

v.

JOHN A. PAVLOVSCAK, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOHN J. WILSON
815 Fifteenth Street, N. W.
Washington 5, D. C.

A. E. KOUNTZ
575 Union Trust Building
Pittsburgh 19, Pennsylvania

VAL J. MITCH
907 Fifteenth Street, N. W.
Washington 5, D. C.

Attorneys for Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Citations to Opinions Below	2
Jurisdiction	2
Question Presented	2
Statute Involved	3
Statement of the Case	3
Reasons for Granting the Writ	5
The Orderly Implementation of the National Labor Policy Expressed by the Labor-Management Relations Act, 1947, Requires That Suits Pertaining to the Administration of an Employees' Welfare Trust Fund (Including Payment of Benefits Thereunder), Established Pursuant to Section 302 (c)(5) of That Act, as Amended, 29 U.S.C. 186 (c)(5), be Brought in the Federal Court in the District in Which Such Fund Has Its Principal Office	5
Conclusion	16
Appendix	1a
Pavlovscak v. Lewis (1960) (D.C. W.D. Pa.), 168 F. Supp. 839	1a
Lewis v. Pavlovscak (1960) (C.A. 3), 274 F. 2d 523	9a

CITATIONS

CASES:

Amalgamated Assoc. v. Wisc. Emp. Rel. Bd. (1951), 340 U.S. 383, 95 L. Ed. 364	6
Arroyo v. United States (1959), 359 U.S. 419, 424-425, 3 L. Ed. 2d 915, 919	7
Barrett v. Miller (D.C., S.D., N.Y., 1958), 166 F. Supp. 929	9
Brooks v. N.L.R.B. (1954), 348 U.S. 96, 99, 99 L. Ed. 125, 134	5
Fikes v. Fund (1958) (Cir. Ct. 10th Judicial Circuit of Ala.), Civil Action No. 36362-X	15

Page

Herr v. Lewis (1954) (D.C. S.D., Ind.), Civil Action No. 576 15
Hickey v. Lewis (1950) (Harlan Cir. Ct., Ky.) 15
Hobbs v. Lewis (Supreme Court of Tennessee, 1954), 197 Tenn. 44, 270 S.W. 2d 352 ..... 9, 15
Kane v. Lewis (1954) (Sup. Ct. N.Y.), 125 N.Y.S. 2d 544 15
Lewis v. Benedict Coal Corp. (Oct. Term, 1959, No. 18), U.S. , 4 L. Ed. 2d 442 9
Local 24, I.B. of T.C.W. & H. v. Oliver (1959), 358 U.S. 283, 296-297, 3 L. Ed. 2d 312, 321-322 8
Luchetti v. Lewis (1954) (D.C., D. Utah), Civil Action No. C 184-53 15
Moses v. Ammond (D.C., S.D., N.Y., 1958), 162 F. Supp. 866 9
Mykalyk v. Lewis (No. 149, March Term, 1959), 398 Pa. 390; A. 2d 9
N.L.R.B. v. Fainblatt (1938), 306 U.S. 601, 83 L. Ed. 1014 5
N.L.R.B. v. Jones & Laughlin Steel Co. (1936), 301 U.S. 1, 22-23, 83 L. Ed. 893 5
Polish Nat. Alliance v. N.L.R.B. (1944), 322 U.S. 643, 88 L. Ed. 1509 6
Textile Workers Union v. Lincoln Mills (1957), 353 U.S. 448, 457, 1 L. Ed. 2d 972, 980-981 ..... 8, 14
Weber v. Anheuser-Busch (1954), 348 U.S. 468, 480, 99 L. Ed. 546, 557 6

STATUTES:

Labor-Management Relations Act, 1947, Sec. 302, Title III, c. 120, 61 Stat. 157, 29 U.S.C.A. 186 ..... 2, 3, 4, 5, 6, 7, 10, 12, 15

MISCELLANEOUS:

Living Trust of Movables in the Conflict of Laws, 45 Harvard Law Review, 969 15
Restatement of the Conflict of Laws, Section 299 15
S. Rep. No. 1734, 84th Cong., 2d Sess. 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

JOHN L. LEWIS, HENRY G. SCHMIDT AND JOSEPHINE ROCHE, AS TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, *Petitioners*

v.

JOHN A. PAVLOVSCAK, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

John L. Lewis, Henry G. Schmidt and Josephine Roche, as Trustees of the United Mine Workers of America Welfare and Retirement Fund of 1950, (hereinafter sometimes referred to as the "Trustees" and the "Trust Fund", respectively), Petitioners, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit at No. 12,835, entered September 18, 1959, and, on a Petition for Rehearing, the order denying the same entered February 10, 1960.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court for the Western District of Pennsylvania is reported at 168 F. Supp. 839 and is printed in the Appendix to this Petition, page 1a. The opinion of the United States Court of Appeals for the Third Circuit is reported at 274 F. 2d 523 and is printed at page 9a of the Appendix to this Petition. The opinion of the United States Court of Appeals for the Third Circuit denying the Petition for Rehearing is reported at 274 F. 2d 527 and is printed at page 15a of the Appendix to this Petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit, affirming the interlocutory order of the District Court, was entered September 18, 1959. Rehearing was denied February 10, 1960. (Appendix, pages 9a and 15a). The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Section 1254(1).

QUESTION PRESENTED[1]

This case poses an important and recurrent question concerning the interpretation of the Labor-Management Relations Act, 1947, not heretofore passed upon by this Court, namely:

Does not implementation of the national labor policy expressed by the Labor-Management Relations Act, 1947, require that suits pertaining to the administration of an employees' welfare trust fund (including those to compel payments of benefits thereunder) set up pursuant to Section 302 (c) of that Act, as amended.

[1] The same question is presented in *Lewis v. Myhalyk*, in which a companion Petition for Certiorari to the Supreme Court of Pennsylvania is filed concurrently herewith.

29 U.S.C. 186 (c), be brought in the federal court in the district in which such fund has its principal office?

STATUTE INVOLVED

The statutory provision involved is Section 302 of the Labor-Management Relations Act, 1947, Title 3, Chapter 120, 61 Stat. 157, 29 U.S.C., Section 186 (printed in Appendix, page 17a).

STATEMENT OF THE CASE

On August 8, 1957, Respondent (plaintiff below) filed this suit in the United States District Court for the Western District of Pennsylvania seeking to compel Petitioners (defendants below) to declare him eligible to receive a pension from the Trust Fund. Jurisdiction was founded upon diversity of citizenship, and service was purportedly made in accordance with Pennsylvania law. Petitioners then filed a motion to dismiss for lack of jurisdiction, which was denied by order of the District Court dated December 15, 1958. On December 21, 1958, that order was amended to allow Petitioners to apply to the United States Court of Appeals for the Third Circuit for an interlocutory appeal under Section 1292 (b) of Title 28 U.S.C. The Third Circuit granted this appeal, and on September 18, 1959, affirmed the ruling of the District Court. On February 10, 1960, the Third Circuit denied Petitioners' motion for Rehearing.

This petition for certiorari and the companion petition for certiorari in *Lewis* v. *Myhalyk*, filed concurrently herewith, raise a basic question concerning judicial review over the administration of employee welfare trust funds created pursuant to Section 302 (c)(5) of the Labor-Management Relations Act, 1947,

29 U.S.C. 186 (c)(5) (hereinafter referred to as the "Act"), namely, whether jurisdiction over the administration of such welfare trust funds is vested in the federal district court at the principal office of such trust funds, or whether judicial review is to be opened up to any state or federal court where service can be obtained under local law.

The Trust Fund here involved was established pursuant to the provisions of Section 302 (c)(5) of the Act, 29 U.S.C., 186 (c)(5). It came into being as an inherent part of an industry-wide collective bargaining agreement, known as the National Bituminous Coal Wage Agreement of 1950, between the United Mine Workers of America and the thousands of bituminous coal operators located throughout more than 26 states. Petitioners, in accordance with that Agreement and the aforesaid Act, consist of a trustee appointed by the operators, one appointed by the Union, and one trustee selected by the operators and the Union. The parties to the Agreement specifically vested broad authority and discretion in the trustees to manage the Trust Fund and promulgate appropriate regulations relating to, inter alia, the payment of pension benefits. That Agreement, in compliance with Section 302 (c)(5) of the Act, further provides that the detailed basis, upon which such payments are to be made from the Trust Fund, should be set down in writing.

In accordance with the Agreement, each operator is assessed a certain royalty for each ton of coal produced for use or for sale, which is then paid directly to the Petitioners and is deposited in a general account. Subsequently, certain of these funds are transferred to a separate trust known as the Pension Trust, as is required by the Act and Agreement.

The Trust Fund, including that portion of it relating to pension benefits, is administered solely in the District of Columbia, where its principal office has been located since its inception, as required by the Agreement. All payments to the Trust Fund are made to Petitioners in the District of Columbia, all trust investments are solely in movables administered in the District of Columbia, and all meetings of the Petitioners (except two emergency meetings) have been held in the District of Columbia.

REASONS FOR GRANTING THIS WRIT[2]

The Orderly Implementation of the National Labor Policy Expressed by the Labor-Management Relations Act, 1947, Requires That Suits Pertaining to the Administration of an Employees' Welfare Trust Fund, (Including Payment of Benefits Thereunder), Established Pursuant to Section 302 (c)(5) of That Act, as Amended, 29 U.S.C., 186 (c)(5), be Brought in the Federal Court in the District in Which Such Fund Has Its Principal Office.

The National Labor Relations Act, known as the Wagner Act, recognized the necessity for a unified national labor policy to prevent industrial strife. *N.L.R.B.* v. *Fainblatt* (1938), 306 U.S. 601, 83 L. Ed. 1014; *N.L.R.B.* v. *Jones & Laughlin Steel Co.* (1936), 301 U.S. 1, 22-23, 83 L. Ed. 893. This unified national labor policy was further implemented by the Labor-Management Relations Act, 1947. *Brooks* v. *N.L.R.B.* (1954), 348 U.S. 96, 99, 99 L. Ed. 125, 134. By these acts, Congress, in order to protect interstate commerce from the adverse effects of labor-management disputes, undertook to regulate labor relations to the full extent of its constitutional power under the

[2] This section of this Petition is virtually the same as the corresponding section of the Petition in the companion case of *Lewis* v. *Muhalyk*, contemporaneously filed herewith.

interstate commerce clause. *Amalgamated Assoc.* v. *Wisc. Emp. Rel. Bd.* (1951), 340 U.S. 383, 95 L. Ed. 364; *Polish Nat. Alliance* v. *N.L.R.B.* (1944), 322 U.S. 643, 88 L. Ed. 1509; *Weber* v. *Anheuser-Busch* (1954), 348 U.S. 468, 480; 99 L. Ed. 546, 557, where this Court said:

> "By the Taft-Hartley Act, Congress did not exhaust the full sweep of legislative power over industrial relations given by the Commerce Clause. Congress formulated a code whereby it outlawed some aspects of labor activities and left others free for the operation of economic forces. As to both categories, the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion of state action. * * *"

The Trust Fund was created pursuant to Section 302 (c)(5) of the Act, in which Congress set forth the requirements governing the creation and operation of welfare trust funds, epitomized as follows:

(1) that the payments to the fund are to be held in trust for certain specified purposes;

(2) that the detailed basis on which said payments are to be made be particularized in writing;

(3) that the employers and employees have equal representation in the administration of said fund, together with such neutral persons as they might choose;

(4) that in the event of a deadlock in the administration of such fund, the federal court at the situs (principal office) of said fund shall appoint an impartial umpire;

(5) that there be provision for an annual audit of the fund, the results of which are to be available

for inspection at the situs (principal office) of the fund; and

(6) that payments intended to be used for pensions or annuities be placed in a separate trust and used for no other purposes.

Additionally, Congress specifically vested equitable jurisdiction in the federal district courts to restrain violations of Section 302. (Section 302 (e) of the Act). In *Arroyo* v. *United States* (1959), 359 U.S. 419, 424-425, 3 L. Ed. 2d 915, 919, this Court noted in relation to this section that:

> "When Congress enacted § 302 its purpose was not to assist the States in punishing criminal conduct traditionally within their jurisdiction, but to deal with problems peculiar to collective bargaining. *The provision was enacted as part of a comprehensive revision of federal labor policy in the light of experience acquired during the years following passage of the Wagner Act, and was aimed at practices which Congress considered inimical to the integrity of the collective bargaining process.*" (Emphasis supplied).

Since this Trust Fund exists as a direct product of the national labor policy, it follows that a body of federal law should be applied to it by the appropriate federal court.

Indeed, in light of the express language of Congress in Sections 302 (c)(5) and 302 (e), it is clear that Congress intended to establish a body of federal substantive law to govern the administration of welfare trust funds and vested judicial supervision of such trust funds exclusively in the appropriate federal court. Admittedly, Congress did not spell out in minute detail how every trust fund is to be administered; but

that apparent legislative forbearance should not permit the federal courts to abdicate their duty of judicial review to state courts, nor permit a federal court to apply state law. To the contrary, as this Court noted in *Textile Workers Union* v. *Lincoln Mills* (1957), 353 U.S. 448, 457, 1 L. Ed. 2d 972, 980-981:

> "The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. *Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy . . . Federal interpretation of the federal law will govern, not state law.*" (Emphasis supplied).

This approach is the only one consistent with the uniform effectuation of the over-all national labor policy. This Court, in recognition of the national labor policy, and, perforce, the necessity for the application of a uniform federal substantive law with regard thereto, has held that the federal courts under Section 301 of the Act must fashion a body of federal law for the enforcement of collective bargaining agreements affecting interstate commerce. *Textile Workers Union* v. *Lincoln Mills, supra.* The "paramount force of the federal law", as in all cases of pre-emption, is such that it prevails over inconsistent state law, whether expressed by an enactment of Congress itself or by the details of a collective bargaining agreement, which federal law empowers the parties to make. See *Local 24, I.B. of T.C.W. & H.* v. *Oliver* (1959), 358 U.S. 283, 296-297, 3 L. Ed. 2d 312, 321-322.

The Trust Fund came into being in 1950 as an integral part of an industry-wide collective bargaining

agreement. This Court, in its recent decision in *Lewis v. Benedict Coal Corp.* (Oct. Term, 1959, No. 18) U.S. , 4 L. Ed. 2d 442, recognized the close interrelationship between the activities of this Trust Fund and the mutual obligations of the parties to the Agreement from which it arose. This Court further stated in *Benedict, supra,* at p. 450, that the national labor policy was an important consideration when viewing this inter-relationship.

Therefore, if the necessary harmony between these two closely inter-related aspects of the national labor policy, namely, employee trust funds and collective bargaining agreements, is to be preserved, it is essential that judicial supervision of both be limited to the appropriate federal court, which shall review by applying a body of federal substantive law. At this moment, this important issue is in a state of confusion. Compare: *Barrett v. Miller* (D.C., S.D., N.Y., 1958), 166 F. Supp. 929 (recognizing that a body of federal substantive law is to be applied to Section 302 (*c*)(5) trust funds), with *Moses v. Ammond* (D.C., S.D., N.Y., 1958), 162 F. Supp. 866 (denying that any jurisdiction exists in the district courts over the supervision of welfare trust funds); and compare: *Myhalyk v. Lewis* (No. 149, March Term, 1959), 398 Pa. 390; A. 2d , decided January 18, 1960, rehearing denied March 10, 1960 (holding that Pennsylvania state courts have jurisdiction over this Trust Fund), with *Hobbs v. Lewis* (Supreme Court of Tennessee, 1954) 197 Tenn. 44, 270 S.W. 2d 352 (holding that the Tennessee courts have no jurisdiction over this Trust Fund, but that suits pertaining to its administration, such as the one at bar, must be brought in Washington, D. C.).

Having demonstrated that these matters should be litigated only in the federal courts, similar dangers of confusion and uncertainty require that the appropriate federal court should be the one at the situs or principal office of the trust fund. Uniformity of judicial review and supervision, so necessary for effective administration, is best achieved by limiting such review to that district court. Indication of the Congressional intent in this respect is found in Section 302 (c)(5), which specifically requires that deadlocks between trustees of a welfare trust fund, if not resolved within a reasonable time by the parties, be settled by the appointment of an "impartial umpire" selected by the district court of the United States for the district in which the welfare trust fund has its principal office.

Unless the federal courts of a single jurisdiction can adjudicate *all* the controversies which may arise regarding the administration of this Trust Fund, there will be no uniformity in its administration and the Trustees will be harassed by uncertainties and inconsistencies. Instead of all beneficiaries being dealt with alike, one applicant for a pension may receive very liberal treatment from the courts of his state, while another applicant may be held to a much more rigid standard by the courts of another state. A trust *sanctioned* upon a national basis, will become one *regulated* on a state-to-state basis.

Mines and miners are located in at least 26 states. If litigation, such as is involved here and in the companion *Myhalyk* case, arises in all of them, or in one or more of them, the risk of divergent decisions is ever present. Pension claims, such as those involved in these two cases, do not turn merely on factual issues. There is a fertile field for judicial interpretation of the

legal considerations which attach themselves to the facts.

The major eligibility provisions for a pension are that the applicant must (1) be 60 years of age or over at the time of filing his application; (2) have completed 20 years of service in *a classified job*, i.e., a job subject to the collective bargaining agreement in the coal industry, during the 30 years *immediately preceding his date of application*; (3) have retired after May 28, 1946, *following regular employment* in a classified job in the mine of an operator signatory to the agreement; and (4) have been regularly employed in a classified job in the coal industry *immediately prior to May 29, 1946*.[3]

According to the Douglas Subcommittee Report, p. 176, in one fiscal year denials of pension applications amounted to 16.7 percent (1182 denials) of those received, some of the reasons for denial revolving around the foregoing requirements. Indeed, this Report goes on to state (p. 177) that approximately a third of all denials in one year were on the ground that the applicant had not been employed in the industry "immediately prior to May 29, 1946." That is precisely the question involved in the case at bar, according to the complaint.[4]

[3] See the complaint filed in the District Court; see, also, for a statement of these provisions, Final Report of Welfare and Pension Plans Investigation (p. 175) submitted to the Senate Committee on Labor and Public Welfare by its Subcommittee on Welfare and Pension Funds (sometimes called the Douglas Subcommittee), pursuant to S. Res. 40 as extended by S. Res. 200 and S. Res. 232 (84th Congress), S. Rep. No. 1734, 84th Cong., 2d Sess.

[4] Paragraph 5 of the complaint avers:

> 5. Plaintiff is eligible for a pension from the aforesaid Fund based upon the following

There are numerous other instances of areas of controversy between pension claimants and the Trustees. For example, in considering employee status in a job subject to the bargaining unit, as required by Section 302 (c)(5) of the Act, the following factual situations occur:

(a) An employer is temporarily shut down, and the applicant has accepted what he contends is temporary employment elsewhere.

(b) An applicant was ill and not working prior to filing his application.

(c) An applicant was previously injured and on workmen's compensation prior to his application.

(d) Whether an applicant, working, e.g., as a maintenance man for company houses, watchman, or company clerk, is in a job subject to the bargaining unit.

"(a) He was certified to be a member of the United Mine Workers of America, Local 7951, Hostetter, Pennsylvania, on July 3, 1953. Plaintiff was employed in the Bituminous Coal Industries for forty-one years.

"(b) Plaintiff was past sixty years of age when he applied for his pension on July 5, 1953.

"(c) Plaintiff retired from work in the coal industry after May 28, 1946.

"(d) Plaintiff completed twenty years of classified service in the coal industry within the thirty years immediately preceding his application for a pension.

"(e) Plaintiff was a member of his local union immediately prior to May 28, 1946; however, due to a sinus condition, plaintiff left the mines in September, 1942, being physically unable to perform this type of work and was on leave of absence from his employment. When, after surgical operations, this condition became cured, plaintiff returned to the mines in January, 1947, where he was employed until April, 1951. • • •"

Also, the phrase "immediately prior to May 29, 1946" calls for interpretation in cases wherein:

(a) A company closed down permanently or temporarily and applicant became unemployed.

(b) An applicant was laid off but remained on company panel.

(c) An applicant was previously injured and receiving workmen's compensation payments.

Also, the requirement that an applicant for a pension be employed within the bargaining unit for twenty years of the thirty years immediately preceding the date of application calls for a determination of whether the applicant was in such an employee status for the required period. In this connection, the following situations are encountered:

(a) The industry in some areas works only a part of the year.

(b) Many employees work intermittently rather than continuously.

(c) Whether all jobs during eligibility period were subject to the bargaining unit.

Thus, fortuitously, two pension applicants whose cases are such that they should be treated alike, may fare differently according to the state in which each may sue. One court might determine that an applicant was not in an employee status while out of the industry for a period of one year because of illness, while another court may treat an absence of one year to be only temporary and establish employee status in that case.

These examples could be multiplied, not only in relation to the pension claimants, but, as well, with

respect to other benefits, such as hospital-medical, death and disaster payments of the instant Trust Fund; moreover other trust funds must, of necessity, encounter like problems. How would trustees deal with such divergent and conflicting views? Not only would they be compelled to treat two applicants differently, but which precedent would they use to deal with similar cases in the future? And, suppose a third applicant comes from a third state, which has not so far passed upon the question.

Aside from the substantive areas of controversy outlined above, there are many situations where divergent judicial views upon procedural matters would "play havoc" with the orderly administration of the Trust Fund. Several examples can be given, where a court not at the situs of the trust may make the following rulings: (1) De novo review, rather than inquiry into abuse of trustees' discretion; (2) permitting pension claimant to seek removal of trustees as part of his suit for a pension; (3) allowing class actions to be maintained; and (4) applying longer periods of limitation than as prescribed at the situs.

To resolve the foregoing dilemmas, this Court may search the authorities of the various states, in order to find the rule which best effectuates a uniform national labor policy. *Textile Workers Union* v. *Lincoln Mills, supra,* 353 U.S. at 457, 1 L. Ed. 2d at 980-981. It is obvious that the effectuation of such uniform policy requires that suits pertaining to the administration of a Section 302 welfare trust fund be brought in the district court at the situs (i.e., principal office) of such fund. It will be found that every court dealing with the instant problems, except the courts in Pennsylvania, has held that suits pertaining to the payment of benefits

from the instant Trust Fund must be brought at its principal office or situs in Washington, D. C. *Hobbs* v. *Lewis, supra; Herr* v. *Lewis* (1954) (D.C. S.D., Ind.), Civil Action No. 576; *Kane* v. *Lewis* (1953) (Sup. Ct. N.Y.), 125 N.Y.S. 2d 544; *Fikes* v. *Fund* (1958) (Cir. Ct. 10th Judicial Circuit of Ala.), Civil Action No. 36362-X; *Luchetti* v. *Lewis* (1954) (D.C., D. Utah), Civil Action No. C 184-53; *Hickey* v. *Lewis* (1950) (Harlan Cir. Ct., Ky.).[5]

In sum, uniform administration of Section 302 (c) (5) welfare trusts is an integral part, and necessary to the preservation, of labor-management stability which Congress sought to achieve in enacting the Labor-Management Relations Act, 1947 (29 U.S.C. 141, et seq.). Conflicting determinations as to eligibility for benefits from the instant Trust Fund by courts of the coal producing states will result in chaos and complete frustration of the Trustees in carrying out the mandate by which the Trust Fund was established under the Act. This will necessarily destroy labor-management

[5] The rulings in these cases were predicated on the elementary doctrine of trust law that suits pertaining to the administration of a trust must be brought at the situs of the trust. The basis of this doctrine was aptly stated in *Living Trust of Movables in the Conflict of Laws*, 45 Harvard Law Rev. 969:

> "The question to what court a trustee of a living trust is responsible in the matter of instructions and accounting is of much importance. Although it is not generally understood, *it must be clear that a trustee must be responsible to the courts of one state only; otherwise, conflicting instructions and differences as to accounts will make the administration of a trust impossible.* If one court is to give instructions and orders to a trustee and to approve his accounts, that court must clearly be one of the state of the seat of the trust; and it has been held that only such a court can instruct, control or remove the trustee." (Emphasis supplied) See also: Restatement of the Conflict of Laws, Section 299.

stability and disrupt peace in the bituminous coal industry. Fixing the situs or location of the principal office of a Section 302 trust fund as the only place where controversies affecting its administration may be litigated, would contribute greatly to achievement of the purposes of the Act. The occasional inconvenience to a claimant is far outweighed by the damage sustained by a trust harried and racked by unequal and inconsistent treatment of its beneficiaries.

CONCLUSION

For the foregoing reasons, it is submitted that this petition should be granted.

Respectfully submitted,

JOHN J. WILSON
A. E. KOUNTZ
VAL J. MITCH

Attorneys for Petitioners

April, 1960.